

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on March 22, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: None.

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 362, SB 411, 3/19/1999

Executive Action: SB 411, SB 362, SB 499, SB
321, SB 412, SB 462, SB 345,
HB 158, SB 383

***{Tape : 1; Side : A; Approx. Time Counter : 0 - 64; Comments :
Tape 1, taped on 4.8 tape speed. All others 2.4 speed.}***

HEARING ON SENATE BILL 362

Sponsor: Sen. Tom Keating, SD 5, presented SB 362. This bill was at the request of the Montana Land and Mineral Owners Association along the high line. He said there were some areas of the state that had shallow gas wells. Once in a while a gas well will reach its commercial limit but there is still enough gas left in the reservoir that it will heat a dwelling or farmstead buildings. It may have enough pressure to last five to ten years longer. The landowner can take over the well from the operator rather than the operator plugging the well and abandoning it. He noted these were low pressure wells and did not have much danger. In order for the operator to release the well to the landowner, he has to get a release from his bond and liability from the plugging of the well. To do that they go to the Oil and Gas Commission and file a report and the landowner assumes the liability for the plugging of the well. A non-commercial well has to provide a CD of \$5,000 or a lien on the property. In order to facilitate those landowners to take over the well, the statute needs amended so that person can purchase a surety bond as the backing for the plugging of the well. The bond is there, the premiums are paid, until such time as the well needs to be plugged and abandoned. In that case, the landowner then abandons and plugs the well according to state requirements and the surety bond is released. If for some reason the landowner doesn't plug the well, then the Oil and Gas Commission can foreclose on the bond and have sufficient money to properly plug the well. This bill would facilitate the landowner with a third method of funding the bonding that he needs in order to take title to the well. ***{Tape : 1; Side : A; Approx. Time Counter : 1 - 6.4}***

Proponents: Patrick Montalban, representing the Montana Oil and Gas Association, spoke in favor of the bill. He said this bill affected the high line area. It is good for the landowner and the state small independent oil and gas companies. ***{Tape : 1; Side : A; Approx. Time Counter : 7.8 - 8.9}***

Opponents: None.

Questions from Committee Members and Responses: Rep. Story asked about the cost of a surety bond. Mr. Montalban replied you could no longer buy a surety bond in the state of Montana in the oil and gas business. It has to be a cash bond. The bill would allow putting up the farm for collateral for the bond, which is a key part of the bill. **{Tape : 1; Side : A; Approx. Time Counter : 9.2 - 10}**

Rep. Story asked what the purpose of the bill was if a surety bond could not be purchased. Sen. Keating said the Board of Oil and Gas stated that the surety bond was available and could be purchased. **{Tape : 1; Side : A; Approx. Time Counter : 10 - 11.5}**

Rep. Eggers asked about the surety bond or the certificate of deposit if it was merely for the purpose of capping the well. Sen. Keating replied it was for plugging the well. It is to make sure that the well is properly plugged and the surface is reclaimed. Rep. Eggers asked if the bond acted like an indemnity for any type of property damage or injuries or other obligations that might have occurred by the previous owner. Sen. Keating replied it was simply for reclamation. **{Tape : 1; Side : A; Approx. Time Counter : 11.5 - 12.4}**

Rep. Erickson asked about the background data. Sen. Keating replied some of these had been used for twenty years and the reservoirs were being depleted. As the reserves decline, the pressures decline. All of the wells are attached to a gathering system. The gas will flow out of the well through a baffle into the gathering line. Sometimes there are well that have two to three times the pressure of these exhausted wells and as a consequence there is not enough pressure in the wells to open the baffle and get into the pipe. It is useless to the operator. The operator will then plug and abandon the well to get rid of the surface liability and paying for trails and damages, entrance into the well site. This is close enough to a farmstead that the rancher can use that gas for another four or five years. Because the gas fields are declining, there would be more of these wells available. Whether their proximity is to a farmstead to make it economically viable for the landowner to use that is hard to determine. There will be a few of these but not a lot. **{Tape : 1; Side : A; Approx. Time Counter : 12.4 - 15.3}**

Rep. Story wanted clarification regarding the surety bond. Mr. Montalban replied it was very difficult for small oil and gas companies to now get a surety bond but it is possible for individuals to get a surety bond. **{Tape : 1; Side : A; Approx. Time Counter : 15.3 - 18.2}**

Rep. Ewer asked what department was in charge of this issue. Sen. Keating replied it was the Oil and Gas Commission. He referred to a letter by Commissioner Tom Richmond who said "we do not see a surety bond as a lesser form of financial assurance than a CD or a property bond under current law." {Tape : 1; Side : A; Approx. Time Counter : 18.2 - 20.7}

Closing by Sponsor: Sen. Keating closed. {Tape : 1; Side : A; Approx. Time Counter : 20.7 - 22.7}

HEARING ON SENATE BILL 411

Sponsor: Sen. Bill Crismore, SD 41, presented the bill. He distributed an amendment. **EXHIBIT(nah64a01)** He had a letter from Dr. Crofts, the Commissioner of Higher Education in support of the bill and Daniel Roberson. **EXHIBIT(nah64a02)** **EXHIBIT(nah64a03)** He explained this bill would allow the State Land Board to give a report to all of the recipients of the state forest lands, which represents about 500 thousand acres. The concern was the state was not generating very much revenue, and in fact some of those section did not generate any revenue for the school trust lands. Some of the sections have never been managed with an income at all. The State Land Board would have to give a report annually. There are ten different agencies that receive money from these lands. He pointed out the state pool for investments generates about 9%. However, we are only generating 1 1/2-2% off of state lands. This brings attention to people that we are not receiving fair value for these lands. He described statistics from 1919 to present day demonstrating the low yields from state lands. {Tape : 1; Side : A; Approx. Time Counter : 22.7 - 32.4}

Proponents: Cary Heggberg, Montana Wood Products Association, spoke in support of the bill. He distributed a copy of a citation from a Montana Supreme Court case, the Department of State Lands vs. Pettibone. **EXHIBIT(nah64a04)** He referred to pages 1-5 of the handout which described the need for fiduciary responsibility by the state to gain the most revenue and gain from the school trust lands. He referred to the Classified State Forest Land Acreage by Grants handout. **EXHIBIT(nah64a05)** These are specific institutions that receive the proceeds from that land. He noted there were many lands that could be managed that would pay for the state Capitol restoration, but they were not receiving income from those lands. He discussed the vested interest by his association. For example, the harvesting of logs, manufacturing the finished product, transporting it-which employees people to engineer and build roads, heavy equipment, sawmills, log home plants, post and pole facilities, plywood

plants, pulp mills and other manufacturing entities. He described auxiliary enterprises, such as fuel deliverers, insurance sales, issue bank loans for operating equipment, provide electrical parts and services, repair tires and a host of other professional services. He pointed out that sustainable timber management to provide a reasonable rate of return for trust beneficiaries is a good alternative and a good way of managing this land. **{Tape : 1; Side : B; Approx. Time Counter : 0 - 7.1}**

Patrick Heffernan, Montana Logging Association, presented written remarks. **EXHIBIT (nah64a06) {Tape : 1; Side : B; Approx. Time Counter : 7.1 - 12}**

Joe Lambson, on behalf of Nancy Keenan, Superintendent of Public Instruction and her capacity as one of the members of the Land Board, spoke in support of the bill. He explained he had opposed the bill when it was first presented in the Senate. However, the amendments offered by Sen. Crismore, they now fully support the bill. The Land Board has no problem with accountability to the public on its operations of the state lands. He pointed out the new computer system would be able to generate this type of information. The Land Board takes management very seriously on its forestry lands. He described the background on previous legislation regarding timber harvest. He said the State Land Forestry Management Plan sets the current target for harvest at about 42 million board feet. Lower harvest levels had to do with the market, since timber prices are so low. He noted Scandinavia and the former Soviet Union were cutting into the market on the East Coast for timber. He said they would support the bill with the amendments because it established a valuable management tool and people could assess the return they were receiving on the land. He distributed a chart of DNRC timber sale data.

EXHIBIT (nah64a07) {Tape : 1; Side : B; Approx. Time Counter : 12 - 15.5}

Rusty Harper, representing State Auditor Mark O'Keefe who was on the Land Board. He said he was sent over to oppose section three of the bill but with Sen. Crismore's amendments he stood as a proponent.

Dan White, Chief Legal Counsel for Secretary of State Mike Cooney, spoke in support of the bill as long as section three was stricken from it. He pointed out other issues needed to be addressed. He pointed out the lawsuit from the Ravalli County Fish and Game vs. Montana Department of State Lands case in which the Montana Supreme Court indicated that income is "a" consideration not "the" consideration regarding school trust lands. Maximizing income is not paramount to the exclusion of

wildlife or environmental considerations from MEPA. MEPA requirements need to be addressed. **{Tape : 1; Side : B; Approx. Time Counter : 15.5 - 18.3}**

Harley Harris, representing Attorney General Joe Mazurek, a member of the Land Board, spoke in support of the bill with the amendments. **{Tape : 1; Side : B; Approx. Time Counter : 18.3 - 19.7}**

John Blomquist, Montana Stockgrowers Association, spoke in support of the bill with the amendments. He noted some valuable points regarding the difficulty of managing a land trust. The trust duty has some other considerations, some other obligations such as long term productivity and multiple use. **{Tape : 1; Side : B; Approx. Time Counter : 19.3 - 21}**

Dustin Doane, representing the Montana Wildlife Federation, spoke as a proponent.

Janet Ellis, Montana Audubon Society, spoke as a proponent, as long as the amendments were offered.

Opponents: Rep. David Ewer, HD 3, spoke as an opponent. He explained the difficulty in assessing asset value of forested tracts. Stock and bond portfolios could be liquidated the same day. Land portfolios are different and are covered by a variety of laws. You won't get the true asset value under the law. He pointed out how easy it was to get a big inflated value on the forested lands.

Questions from Committee Members and Responses: Rep. Erickson asked about the returns on grazing leases and cabin sites. Lambson replied these were all considered and would be available in the new computer system. **{Tape : 1; Side : B; Approx. Time Counter : 26.3 - 28}**

Rep. Story asked about setting the value for the property. Heggberg replied there were underlying appreciation of land values which are not spendable but an important means of calculation by the Land Board. He said that private forest land was taxed at its productivity value, its ability to regenerate timber. The bill would ask each land office region to report separately. That was done to give some indication as to whether the forest land in certain areas of the state maybe returning a better return on investment than other areas. He noted the effort was aimed at the valuable forest land, such as the Swan State Forest, that are not generating any revenue. **{Tape : 2; Side : A; Approx. Time Counter : 0.3 - 6.4; Comments : Tape speed 2.4.}**

Rep. Mood asked why the Audubon leases had risen exponentially over the past three years. Director Clinch replied the department was trying to implement fiduciary responsibilities and obtain full market value on all users. Cabin site rental rates increased and also charges for licenses and leases. He clarified about the current statutes regarding fiduciary abilities. He agreed the current management under the forest management plan was restricted from maximizing forest management. A wide variety of options was looked at including the timber production strategy where the forest lands could be managed strictly for their wood fiber production. That alternative in the plan proposed to yield 60-80 million board feet a year. A wide variety of other facets of state land management was also looked at, such as increased cabin site rentals in the future or other potential commercial developments. A strategy of less aggressive timber harvest management proposals would save opportunities for the future which was the justification in terms of the forest management plan that the department operates under today, compared with the most aggressive, biological sustained yield that was one of the alternatives. **{Tape : 2; Side : A; Approx. Time Counter : 6.4 - 12.9}**

Rep. Mood asked if there continued to be constraints against the management of forest trust land or any other trust land, constraints provided by statutes, was there a real possibility of lawsuit to the State Land Board to require sale of the land or whatever they had to do to in order to maximize their revenue. Director Clinch said that would be possible as there were a number of state statutes litigated in the last several years relative to their unconstitutional nature. Over the last decade there has been an erosion of the return. **{Tape : 2; Side : A; Approx. Time Counter : 10.2 - 14.2}**

Rep. Mood asked Mr. Heggreberg about other states that have sold their trust lands and are using the money as investment returns. Heggreberg replied this was true, particularly in the Midwest, have liquidated their state land assets. The western states that is not very common because of the intermingled ownership of forest lands in particular. Western states have made a conscious decision to not sell. He described the way other states have managed their state forest lands. He said they had done an analysis of how the western states had stacked up. A while back, Washington state was earning about 8-8 1/2% on their forested trust lands. Since then, with the advent of spotted owls and various salmon listings under the Endangered Species Act, Washington state has also seen an erosion of their returns. Idaho is doing a good job of managing their land assets for return on investments, but they don't have a calculation that is called for in SB 411 either. There is no formal analysis

comparing one states return on investments to others. **{Tape : 2; Side : A; Approx. Time Counter : 14.2 - 17.3}**

Rep. Raney asked how this would all work in arriving at an asset value and determining rates of return. He pointed out if we wanted to maximize revenue we could just go clear cut. Also you would have to consider commodity prices, which varies from year to year. It would be difficult to value the asset and use that to push the average rate of return, where there are so many variables involved. Director Clinch replied he would take a broader approach and say if we truly were going to be held to the standard of maximizing income, forest product sales need to be considered. Wood products are only one consideration. You could do a moderate harvest and then maximize the value of those in the market place for other uses, such as commercial recreation or development. Wood products production may not be the long term goal. For example, the Swan Forest value is in the standing timber volume but it perhaps more importantly twenty miles of river front property and magnificent view sheds and some other things. He stated that was the value to capture if held to maximizing revenue, and should be taken into consideration when determining a value. The strategy and the vision of trying to look to the future was one of the reasons the State Forest Management Plan was adopted. It didn't call for accepting a higher timber harvest because we were cognizant that we are in a changing market place and that perhaps a less aggressive harvesting schedule today, in maintaining that asset, would capture some higher value in the future. This bill would be a catalyst for a more detailed discussion on these types of issues, which is healthy in trust land management. **{Tape : 2; Side : A; Approx. Time Counter : 22.5}**

Rep. Hurdle asked if the Capital and the University trust lands were not presently being managed. Mr. Heggberg replied there were many tracts of land, such as the Beaver Lake complex, that had little management over the last fifty years. The point of this bill is to address those tracts of land that have not had any management, such as no timber harvesting, no development and no effort to secure revenue from that land, be it from timber harvesting, establishing a golf course or an RV park or anything. If this was a piece of private land, you would want to know what it was worth and what was its return. **{Tape : 2; Side : A; Approx. Time Counter : 22.7}**

Rep. Wagner asked what the bill would do that could not already be done in current law. Sen. Crismore replied it would mandate the department to give an account of what actually happened with each one of those tracts of land. **{Tape : 2; Side : A; Approx. Time Counter : 22.7 - 33.5}**

Closing by Sponsor: Sen. Crismore closed. He pointed out the bill does not mention an increase of harvested trees, which was not the intent. He noted a trend of people that did not want that to happen, but there is other ways to make money off of these lands. He mentioned if we owned land and had no other means of income to support our families, we would be looking at a way to make money. He described revenue generating ideas such as cabin leases or trades of isolated tracts. He discussed the 1910 fire and how much growth had occurred since then. **{Tape : 2; Side : A; Approx. Time Counter : 33.5 - 47.4}**

EXECUTIVE ACTION ON SENATE BILL 411

Rep. Younkin **MOVED DO CONCUR** SB 411. She **MOVED** the amendment. The question was called on the amendment. The motion **PASSED** unanimously 20-0.

Rep Mood **MOVED DO CONCUR AS AMENDED**. Rep. Story discussed a technical amendment that was needed. **{Tape : 2; Side : A; Approx. Time Counter : 47.4 - 51}**

The question was called on the amendment. The motion **PASSED** unanimously.

Rep. Younkin **MOVED DO CONCUR AS AMENDED**. Rep. Wagner said he was hesitant to support it. The agricultural community could be next. Cabin leases may be the idea of choice and suddenly there would be cabins all along the lakes and rivers, every 50-100 feet, as opposed to harvesting timber on it and letting it grow back and leaving it as wildlife habitat. If this was the only source of revenue for the schools then it should be maximized, but its not, it is additional money. Rep. Tash pointed out the purpose was not to maximize but to optimize the return. This is a long term thing because it deals with a renewable resource. Higher and better use is a consideration. Rep. Younkin added that any trustee, regardless of whether it was a trustee of this land, the trustee has an obligation to preserve the trust properties as a whole and also to keep the property productive.

The question was called. The motion **PASSED** 12-8 on a roll call vote. **{Tape : 2; Side : A; Approx. Time Counter : 51 - 61}**

EXECUTIVE ACTION ON SENATE BILL 362

Rep. Curtis **MOVED DO CONCUR** SB 362. She pointed out this was a common sense approach to utilize a resource and exercise stewardship.

The question was called. The motion **PASSED** 19-1 with Rep. Hurdle voting no. **{Tape : 2; Side : A; Approx. Time Counter : 61}**

EXECUTIVE ACTION ON SENATE BILL 499

Rep. Younkin **MOVED DO CONCUR**. She **MOVED** the amendment.

EXHIBIT (nah64a08) Rep. Younkin asked Mr. North to explain the difference between the 03 and the 04 amendments. Mr. John North replied the difference was the 03 was from Sen. Grosfield. Those differences apply to section 5 which pertain to stream construction projects, such as bridges within the stream. Generally, they provide for those projects, short term water quality standards can be approved. These are known as the narrative standards, to protect uses, as opposed to the numeric standards because those will be exceeded at most stream construction projects temporarily. There are conditions on this that limit the effect and the duration of them. The changes between 03 and 04 occur in subsection one where it says "on authorization by the department" which is referring the Department of Environmental Quality. What has been added is "or the Department of Fish, Wildlife and Parks pursuant to subsection 4". A cross reference to subsection 4 has been added to make it absolutely clear that Fish, Wildlife and Parks can also invoke the short term water quality standards. **{Tape : 2; Side : B; Approx. Time Counter : 5 - 6.3}**

Rep. Younkin noted this would allow the state to comply with the EPA rules on the water quality standards. If this is not done, the federal government would come in and tell us what to do. **{Tape : 2; Side : B; Approx. Time Counter : 6.3 - 9.6}**

Rep. Tash noted the EPA applauded Montana's efforts in regards to the Federal Clean Water Act and the compliance to it, particularly 303D. Montana is touted as being a model and an example for compliance with TMDL orders from the federal people. The DEQ had received the letter which follows the primacy concerns in finding local solutions. **{Tape : 2; Side : B; Approx. Time Counter : 9.6 - 11.2}**

Rep. Hurdle asked about page 4, new section 6, regarding board rules for permits. Todd Everts replied the EPA said you can't assume that ambient ground water will meet surface water standards. If there is a discharge from ground water into surface water, it may have some background level of pollutant.

Rep. Raney asked about previous opposition to the amendments. Director Simonich said the reason this is being done is the EPA has disapproved those portions of the statute that we have in Montana. EPA will promulgate rules for the state of Montana if we don't do something. That provision of law has not really begun to serve the purpose for which it was intended. The EPA continually require parties to go through a federal permitting process that the state didn't require. The State position is to make sure it is handled under state law. **{Tape : 2; Side : B; Approx. Time Counter : 11.2 - 16.6}**

Rep. Curtiss asked if the Fish and Game Department would become the lead agency or were there two lead agencies. Director Simonich replied the reason Fish, Wildlife and Parks were put in there was because they are the operable state agency that gives approval on a 310 permit. When someone is doing work under the Streambank Preservation Act and they need that 310 permit, it is Fish, Wildlife and Parks that sign off on it because they work directly with the conservation districts. This correctly indicates in law which agency would be a program that uses the narrative standard that had already been adopted by the board. **{Tape : 2; Side : B; Approx. Time Counter : 16.6 - 17.5}**

Abe Harpstad explained the new section of the amendments deals with in stream construction or stream rehabilitation. Some of those in stream activities are covered by a 310. Some are covered under the 404 permits from the Army Corp of Engineers. The department still has to process those permits for certification. **{Tape : 2; Side : B; Approx. Time Counter : 17.5 - 18.8}**

Director Simonich commented that DEQ had the 401 certification. The other area that he was aware that another agency would be involved was another section of the law, Fish, Wildlife and Parks had the ability to authorize actions they would be involved with, the 124 permits. He said there were not trying to expand and provide authority to any agency that currently didn't have it but to recognize those agencies that have that and for those activities, rather than operating under a blanket categorical exclusion which is currently in the law. What they would be operating under with these amendments would be setting aside numeric standards and instead implementing narrative standards for those specific instances. **{Tape : 2; Side : B; Approx. Time Counter : 18.8 - 20.2}**

The question was called on the amendments to SB 499. The motion **PASSED** 19-1 with Rep. McGee voting no.

Rep. Younkin **MOVED** another amendment, #901. **EXHIBIT (nah64a09)**
Todd Everts explained that the prior set of amendments that the committee passed struck out lines 4-8 on 7 and replaced them with some language but did not replace them with language that involved existing water rights. This is the Blomquist amendment that says the diversion or withdrawals of waters pursuant to basically the water use act, are non significant activities.
{Tape : 2; Side : B; Approx. Time Counter : 20.2 - 21.9}

Rep. Younkin **MOVED** the amendment. She explained that diversions made under the Water Use Act, Title 85, Chapter 2, those are existing water rights. The simple act of diverting water is a non significant act. If somebody wants to put in a new head gate or rip-rap the river, they have to get permits for that. Simple diverting is a non significant act and does not affect water quality. **{Tape : 2; Side : B; Approx. Time Counter : 21.9 - 23.2}**

The question was called on the amendment #901 to SB 499. The motion **PASSED** 19-1.

Rep. Younkin **MOVED DO CONCUR AS AMENDED**. Rep. Harper asked if the amendment just adopted was narrower, since it was talking about diversions and withdrawals as exempt. It was replaced with customary activities involved with the use of water. He asked what this would mean if he shut a head gate, would that be exempt. John Blomquist clarified the series of amendments addressed the 310 issue. The departments amendments struck the "ii" which was placed in there to make sure that the use of water, establishment of water right or a permit under Montana law was also exempt from non-degradation review, which was addressed in the second amendment which was adopted. Essentially, the EPA concerns have been addressed with these amendments with how 310 permits were handled and not subjecting the utilization of water and water quantity to non degradation use. Rep. Harper commented that customary activities involving the use of water involve more than merely diversions and withdrawals. He pointed out if he could shut down a head gate at 2,000 inches, he could flood a creek out. Blomquist pointed out you do not have to divert the water, the head gate could be shut any time. The water quality laws don't make you divert water. Rep. Younkin pointed out the old language was addressed by the amendments. Rep. Harper noted that a customary activity of closing a head gate could flood a creek. This law would be replacing other law but did not say the same thing. **{Tape : 2; Side : B; Approx. Time Counter : 23.2 - 32.1}**

Rep. McGee asked what would happen if this bill did not pass. Director Simonich replied if the state of Montana did not take

steps to correct those standards that have been disapproved by EPA within 90 days, EPA must move forward and promulgate federal standards for Montana. Rep. McGee asked what these rules would be. Simonich said we could not depend on EPA promulgating the same rules as we were putting forth in this legislation. Rep. McGee asked if this legislation was DEQ's idea of how Montana ought to deal with Montana's situation and at the same time answer EPA requirements. Simonich said that was correct. **{Tape : 2; Side : B; Approx. Time Counter : 33 - 34.5}**

Rep. McGee read his prepared statement. He said "Montana has determined our own water quality and lead the way in many areas and was recognized by EPA and applauded us. Then we took some actions a couple of sessions ago and several environmental groups, including MEIC and Northern Plains Resource Council sued the EPA to make Montana comply with EPA standards or their other ideas. EPA goes for years, not doing their job in monitoring us, until the suit. As a result of the suit by MEIC and Northern Plains, EPA threatens Montana with non-compliance and gives us 90 days to comply. So everyone around here has been scrambling in trying to satisfy EPA's mandates saying we must preserve our primacy. So we end up with a de-facto EPA administration in Montana so overturning Senate Bills 330 and 331. Therefore, I say, we kill this bill, we let EPA come in take over and establish their own rules, which they are trying to get us to do for them, and do it at their own costs. Then we close the doors at DEQ and take the savings and give it to the taxpayers or more appropriately MEIC or Northern Plains Resource Council for showing us the right way. This is a direct circumvention of our legislative process. Those of you who hold the sanctity of I-137, beware." **{Tape : 2; Side : B; Approx. Time Counter : 34.5 - 37.8}**

Rep. Raney replied he did not think any extractive industry or agriculture would want the federal government to decide each rule and inspect Montana business. He pointed out that was why we accepted primacy years ago because we felt we could better treat the people and the businesses in our own state than the federal government. **{Tape : 2; Side : B; Approx. Time Counter : 37.8 - 39}**

Rep. Ohs asked if the TMDL legislation from last session was secured. Blomquist said it was safe. He noted he was one of the attorneys on the case in Colorado that was referred to by Rep. McGee. The lawsuit was filed down there. There were some interveners here, the state of Montana, Western Environmental Trade Association, Coal Council, and these amendments to the Water Quality Act are pretty fairly and narrowly tailored. What EPA disapproved was fairly minimal. The 308 situation took a lot

of gyrations to get through, the short term authorizations. It was a significant issue to deal with, the question of how we would do 310 permits in short term authorization. He said it was his opinion, that once this was sorted through and EPA figured out, they didn't really think it through too well. The amendments are very surgical and if the legislation is passed, the minor issues are handled. He asked what would the plaintiffs do with the TMDL aspect. There is already a lawsuit over in Missoula, in federal district court, on the TMDL issue. The fate of the TMDL program, to a certain degree, rests with U.S. Judge Meloy in Missoula. EPA has said we are on the cutting edge there, so he was confident about the outcome. He pointed out that the plaintiffs in this case have until the first of April to amend their complaint. They have indicated that they may go after some of the things that EPA has approved. This legislature can't do anything about that. This bill does deal with the surgical aspects that the legislature can deal with. **{Tape : 2; Side : B; Approx. Time Counter : 39 - 42.2}**

Rep. Orr pointed out the way EPA had interjected into our affairs in Montana was when they had declared that navigable water was interstate commerce and have since far exceeded that. There was a court decision in the Third Circuit Court of Appeals within the last year or two that said the EPA, by extending its reach to streams, ponds, swamps, etc. was a stretch of the imagination. He pointed out we wouldn't be having these discussions if it wasn't misinterpretation of the Tenth Amendment and our unwillingness to assert our rights. **{Tape : 2; Side : B; Approx. Time Counter : 42.2 - 43.9}**

The question was called on the bill as amended. The motion **PASSED** 14-6 on a roll call vote. **{Tape : 2; Side : B; Approx. Time Counter : 43.9 - 46}**

EXECUTIVE ACTION ON SENATE BILL 321

Rep. Bitney **MOVED DO CONCUR**. Rep. Mood asked about the narrowly defined transfer stations. Rep. Orr replied the purpose of the bill was to save local government money to pay license fees. The question was called. The motion **PASSED** 19-1 with Rep. Gutsche voting no. **{Tape : 2; Side : B; Approx. Time Counter : 46.4 - 50.8}**

EXECUTIVE ACTION ON SENATE BILL 412

Rep. Mood **MOVED DO CONCUR**. He pointed out it was good policy to allow some flexibility in slash burning because there are such

narrow windows of opportunities now. The question was called. The motion **PASSED** 20-0. **{Tape : 2; Side : B; Approx. Time Counter : 46.4 - 54}**

EXECUTIVE ACTION ON SENATE BILL 462

Rep. Younkin **MOVED DO CONCUR**. The Raney amendments were distributed. **EXHIBIT**(nah64a10) He **MOVED** the amendments. He pointed out the need to look at this after the 15 year period. **{Tape : 2; Side : B; Approx. Time Counter : 55.5}**

Bill Curley explained the public notice provision that is routinely done. He pointed out that even under CECRA this amendment may require a separate comment period for the easement. The party responsible would apply for this as part of a remedy and the department is required, promptly, to hold a public comment period. **{Tape : 3; Side : A; Approx. Time Counter : 2.5}**

Rep. Raney said amendment number one could say "upon receiving a completed application and following public notice, the department shall allow for a thirty day public comment period". He **MOVED THIS SUBSTITUTE AMENDMENT**.

Rep. Ohs commented that this would allow for two separate comment periods and two separate notices. Rep. Raney said these comment periods could be years apart, since this is near the final remedy period. **{Tape : 3; Side : A; Approx. Time Counter : 2.5 - 3.7}**

The question was called on the substitute Raney amendment. The motion **PASSED** with Reps. Stovall, Ohs, Tash and Dale voting no.

Rep. Younkin presented an amendment. She **MOVED DO CONCUR AS AMENDED**. Rep. Raney asked why any public body would want to acquire rights in an environmental control site and take on that responsibility. Director Simonich said it made sense for the governing body to acquire because there may be long term maintenance requirements of the site. **{Tape : 3; Side : A; Approx. Time Counter : 3.7 - 11}**

Rep. Harper pointed out allowing local government to control an environmental control easement is the burden that runs with the land. **{Tape : 3; Side : A; Approx. Time Counter : 22.7 -23.5}**

Rep. Younkin **WITHDREW** the amendment. **{Tape : 3; Side : A; Approx. Time Counter : 22.7 - 24}**

Rep. Erickson distributed an amendment. **EXHIBIT (nah64a11)** He **MOVED** the amendment which was #46201. He explained this addressed concerns about remediation, reclamation or restoration knowing that there are already good laws that say the land has to be reclaimed. He was afraid the idea of an institutional control would be used on lands that already have reclamation bonds. Rep. Younkin asked if this would prevent an environmental control as part of an overall reclamation plan that would be ultimately bonded. Todd Everts responded that under this act for this type of environmental control easement, yes it would prohibit it.

Rep. Mood asked why would the fact that a site had been bonded be precluded the use of this tool in remediation. Rep. Erickson replied that reclamation had already been bonded and should be held to. Rep. McGee pointed out an easement was an encumbrance on the ground but not necessarily a remediation. It is a legal status of the land. If I own the land and am bonded for it, why couldn't I also have an easement on that land. Remediation is a legal status, the work can still be done. Rep. Erickson said he was tying it to the law that talks about reclamation, needing to be done, and arguing that if you already have a plan you can't suddenly change it into a golf course. Rep. Tash felt existing law would regulate this.

Rep. Dale said there were numerous cases where changes in times and situations you would want to have the flexibility to reclaim something to the highest use. For example, it wouldn't make sense to spend \$30 thousand dollars reclaiming an acre that is worth \$250 dollars. **{Tape : 3; Side : A; Approx. Time Counter : 24 - 30}**

Rep. Younkin pointed out the whole idea was to protect public health with an environmental control easement on an area that has been reclaimed as much as it can be reclaimed. This is not a way for a polluter to avoid having to clean up. There is nothing in this bill that supercedes the State Superfund Law or federal CERCLA law. These laws still must be complied with. She noted that the Erickson amendment if you are going to have a bonded reclamation site you can't have an environmental control easement on top of that. **{Tape : 3; Side : A; Approx. Time Counter : 30 - 33}**

Rep. Erickson said he was trying to amend the definition section. It says an environmental control site which means any site that may require reclamation, which is pretty broad. He worried this would allow a site that required reclamation to have an environmental control site instead. **{Tape : 3; Side : A; Approx. Time Counter : 32.1 - 33.8}**

Rep. Ohs said he was against the amendment because it stops institutional controls and stops the intent of the bill.

The question was called on the Erickson amendment. The motion **FAILED** 13-7. *{Tape : 3; Side : A; Approx. Time Counter : 33.8 - 38.5}*

Rep. Younkin explained this bill did not allow avoidance of CERCA. This would give the department, the state and neighbors to a polluted site, an additional tool to use to make sure that public health and safety are going to be protected. You can only do so much to get something clean. It still may not be appropriate to use that land for some uses.

The question was called on the SB 462 as amended. The motion **PASSED** 15-5 on a roll call vote. *{Tape : 3; Side : A; Approx. Time Counter : 38.5 - 44.3}*

EXECUTIVE ACTION ON SENATE BILL 383

Rep. Tash **MOVED TO RECONSIDER** SB 383. He felt it was apparent that during the executive action the actions were on the amendments rather than on the bill. He said this was the cluster development bill. The question was called. The motion **FAILED** 12-8 on a roll call vote. *{Tape : 3; Side : A; Approx. Time Counter : 44.3 - 47.4}*

EXECUTIVE ACTION ON SENATE BILL 345

Rep. Dale **MOVED TO RECONSIDER** SB 345, off the table. The motion **PASSED** 11-9 on a roll call vote.

Rep. Dale **MOVED DO CONCUR**. Rep. Dale presented amendments. **EXHIBIT**(nah64a12) He **MOVED** the amendments. He discussed the need to reconsider the bill. There were differences between urban interests and rural interests in our state. There seemed to be a bigger gap between the urban communities who were producers of services and sellers of services and goods and the rural communities that were the producers of resources. This issue is one of private property rights and protecting our state from a process that was influenced in the way the proponents of I-137 claimed the process was being influenced. He felt that not all the information was put before the public such as the fiscal statement, which was information that was withheld that would have given the voters of Montana a much clearer look at what this vote could cost them. School equalization funding was not discussed at all. Every site is different. Every mineral regime

has different chemical constituents. Other types of mining are much more likely to produce heavy metals that have a possible detrimental effect on the environment. There has been a claim that this protects big corporations, but corporations hire local people. The bill as amended will be a responsible step by the legislation to protect Montana from the possibility of takings lawsuits and to protect private property rights of family operations and independent miners and small companies who have put their own resources and their life efforts into a property, playing according to the rules that have become ever more difficult and jumping through all the hoops and expecting to be able to complete a project and a process and then having it cut off right in the middle. Because of these possible financial ramifications and the inconsistencies with the overall efforts to encourage responsible resource development, the bill deserves another look. He pointed out the amendments #34502.

Rep. Dale explained the amendment reflected the intent of the original bill. He distributed a list of properties who would qualify for protection under the amendment. **EXHIBIT (nah64a13)** He noted both sides used statistics of how people voted, either by county or by House and Senate District. The I-137 results, which have been touted as the will of the people may have been the will of the majority of a very low turn out of voters.

EXHIBIT (nah64a14) In those counties that had knowledge and familiarity with the issue, the voting margins against I-137 were in the 65-70 range and there were 9 or 10 of those. In those counties where there was an overriding emotion, based on the word cyanide, the biggest pro-vote was 65% and that was in Missoula County. There are enough questions about this that it justifies an exposure to at least satisfy the question of was it fair. He referred to the handout regarding taxes to just one county. He asked if the taxpayers in Montana were prepared to pick up these tax bills. **EXHIBIT (nah64a15) {Tape : 3; Side : A; Approx. Time Counter : 47.4 - 61}**

Rep. Harper discussed concerns about the amendment. **{Tape : 3; Side : B; Approx. Time Counter : 1 - 2}**

The question was called on the amendment. The amendment **PASSED** 11-9 on a roll call vote. **{Tape : 3; Side : B; Approx. Time Counter : 2 - 10}**

Rep. McGee presented an amendment to SB 345, page 3, lines 5 and 6 to strike "or any amended permit that expands the mine operation for the life of the mine". Rep. McGee discussed the rationale behind the amendment. The I-137 language begins on line 27, page 2 and continues to page 3. He read that portion of the bill. He pointed out if this was the intent of I-137, the

language on lines 5 and 6 overturns the intent of I-137. The bill would then comply with I-137 and offer to local governing bodies the option of doing something more. **{Tape : 3; Side : B; Approx. Time Counter : 26 - 28.4}**

Rep. Dale commented that the language would be questionable. For example, if Golden Sunlight Mine had to move a road, that would be an amendment. He pointed out that Mr. Jensen of MEIC said he did not intent to affect the Golden Sunlight Mine but on the day after the permit was issue, his group filed a lawsuit to invalidate the permit. **{Tape : 3; Side : B; Approx. Time Counter : 26 - 29.9}**

Rep. McGee said he would strike "the life of the mine". He said I-137 said you would not expand but line 6 says you are going to expand. Rep. Dale said given what people understood I-137 did, it was to keep a mine from growing bigger. It would not shorten the active life of the mine if they found additional reserves they could continue. That makes sense to recover the maximum resource. **{Tape : 3; Side : B; Approx. Time Counter : 29.9 - 33.6}**

Rep. Curtiss pointed out that one of the problems in the state was being undercapitalized. The reason for that is because of ever changing rules and regulations and a lot of that has to do with permits. Four years ago there was a campaign to go to a one stop permitting process so people would know what rules they were playing by. If a mine is operational, they shouldn't have to be closed down or curtailed simply because another permit is required. She opposed the amendment. **{Tape : 3; Side : B; Approx. Time Counter : 33.6 - 34.7}**

Rep. McGee offered a SUBSTITUTE AMENDMENT. He said line 5, page 3, instead of striking all that language, the language would read "or any amended permit" and then strike the rest of it on line 6 and insert after the word permit "necessary for the continued operation of the mine." He read the amendment. He said he did not understand the permitting process but this amendment would allow a mine to amend their permit to move a road, an operational amendment. **{Tape : 3; Side : B; Approx. Time Counter : 34.7 - 35.8}**

Rep. Tash pointed out if Rep. McGee did not understand the permitting process, then the amendments may not be that necessary. Rep. Ohs said he did not understand what the amendment would do. Rep. Dale said it would allow the mine to continue operating with necessary amendments, but not expanding in scope. If they find a little bit more reserve they could

amend it and recover that without creating a new operation.

{Tape : 3; Side : B; Approx. Time Counter : 35.8 - 37.9}

Rep. Ewer pointed out these amendments were not clear.

Rep. Ohs suggested this be postponed until Friday. ***{Tape : 3; Side : B; Approx. Time Counter : 37.9 - 41.2}***

Rep. Dale **MOVED TO ADJOURN.** The motion **PASSED** unanimously.

ADJOURNMENT

Adjournment: 7:45 P.M.

REP. BILL TASH, Chairman

DEB THOMPSON, Secretary

BT/DT

EXHIBIT (nah64aad)